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Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street
Washington, DC 20591

Re: FAA-2003-15085

Thank you for the opportunity to comment on Docket Number FAA-2003-15085. I applaud the intent of the Rulemaking to amend Hazardous Materials manual and training regulations and incorporate guidance contained in Advisory Circulars. Your efforts to improve the transportation system as it relates to the transportation of Hazardous Materials are appreciated, but do not fully consider the challenges faced by a significant segment of the air transportation community.

I do not believe that this Rulemaking is sufficiently comprehensive to accomplish the stated goal of developing clear standards and uniform compliance with the regulations throughout the commercial air transport system. You deal comprehensively with the challenges faced by the major carriers, but have not embraced the issues facing the rest of the all-cargo industry.

49CFR part 175. 5 applies "...to the acceptance for transportation, loading and transportation of hazardous materials in any aircraft in the United States and in aircraft of United States registry anywhere in air commerce..."

FAR 1: Air commerce means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

I believe the rules regarding the transportation of hazardous materials 'in 'Air Commerce' should apply uniformly to those operating 'in air commerce'.

Part 119

This rulemaking only affects operators certificated under part 119. This rulemaking should include operators conducting business in "air commerce" under 14CFR Part 125, and many operators conducting business under 14CFR part 91. Training requirements for both Initial and Recurrent programs should be on similar cycles.

The definition of Hazardous Materials in 49CFR 171.8 includes materials

“...that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103)...”

To achieve the goal of clear standards and uniform compliance through training, throughout the commercial transportation system, all aviation businesses operating “in air commerce” should be subject to the same training standards. A DC-8 operator conducting business under part 125, transporting paint (class 3) for an automotive customer, is required to train its personnel in the Haz-Mat regulations every three years under 49CFR 172.400. A DC-8 operator conducting business under part 121 transporting the same paint (class 3) conducts annual training, 14CFR 121.433a(a). Both operators use similar equipment and transport similar cargo for essentially the same customer base. The ‘smoking hole’ following an aircraft accident would be similar for each aircraft, but the training interval requirements designed to prevent such an event differ considerably.

An operator conducting business under part 91 isn’t faced with Manual or Training requirements. If I own an aircraft, a Cessna 402, for example, and fly automotive paint (class 3) to my friends’ house in Florida, to help him work on his car, I am not subject to the Haz-Mat regulations, because I am not transporting anything ‘in air commerce.’ If I own a paint manufacturing business & fly some of my product (class 3) from Michigan to a potential customer in Florida in my own Cessna 402, I might be in air commerce under the definition, but not operate as a commercial operator. If I employ a professional pilot to fly my paint and me to Florida in my company owned Cessna 402, I’m transporting regulated material in air commerce, but because this carriage is incidental to my principal business I’m not considered a commercial operator and not subject to the same rules. However, if I board a Cessna 402 in Tampa, FL & fly to Ft. Myers, FL on a scheduled carrier, and I carry my automotive paint (Class 3) in my suitcase(s), the air carrier and I are clearly subject to the hazardous materials regulations. Since I didn’t declare the paint to the carrier, I am in violation of a number of Federal and State regulations.

If my intent is to move paint (Class 3) in interstate transportation, whether my business is primarily air transport or paint manufacturing, my means of transport and I should follow similar rules to prevent disaster.

I appreciate the problems imposing this type of structure on Part 91 and 125 operators. Many responsible corporate citizens operating under parts 91 and 125 already conduct annual training in the hazardous material regulations. Please consider that training given to a part 125 operator in June 2000, would only now incorporate much of the material in HM-215 (d) published in 2001.

Section 2 Discussion of Proposals

Part E Training Program

I value the depth and breadth of the proposed training programs. I believe the establishment of Standards for Instructors should be part of this rulemaking.

There are differences between the knowledge and skill levels of Instructors. There are differences in methods of presentation, length and quality of instruction. I believe the regulation should mandate a skill level for Instructors in the same manner the regulation mandates skill level for management personnel required for operations conducted under parts 121 and 135 from Part 119.65.

At this writing, carriers are responsible for the qualification of their own instructors. Approval of Instructors is left to the Principle Operations Inspectors generally without regard to input of the FAA Office of Security and Inspections.

RSPA (you) offer a 3-day Instructor Training class at the Transportation Safety Institute (TSI), implying that a three-day Instructor class is the standard. The Instructor class is in addition to the Air Transportation of Hazmat course. Your basic course; 'Transportation of Hazardous Materials' based on 49CFR is 5 days in length.

The European Community (EC) has created and requires the position of Dangerous Goods Safety Advisor (DGSA) for each carrier that loads, unloads or transports Dangerous Goods. I recommend a qualification program certifying at least the basic knowledge a person should possess before instructing Haz-mat should be implemented before a person instructs in this area.

Section 9 Recordkeeping Requirements Paragraph (b) would require comprehensive training records maintained at the current location the trained person performs or supervises the Transportation Related Function. This rule places an unnecessary burden on operators without 'brick & mortar' facilities. In our operation, we are at our customers' direction as to the airport(s) where we conduct operations and the length of time we will operate from these airports. In nearly all of our work sites, maintenance personnel operate out of ramp vehicles. While the NPRM was silent on maintaining Haz-Mat training records for pilots at Headquarters versus on the aircraft they operate, you state that the certificated mechanic will have to carry his/her comprehensive Haz-Mat records with them at all times. We document required training on wallet size card carried in the same manner as the airman certificate. This card documents successful completion of a number of OSHA required training including the Powered Industrial Truck Operators certification. I believe it would be more reasonable for an Inspector to view a summary card on the mechanics / pilots person and then request the full certification you require from Headquarters.

Paragraph (c) (3) requires a statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holders approved hazardous Materials training Program. There is no requirement under Part 91, 125, 135 or 121 for an operator to have a "Director of Training." I believe the mandated creation of this position is outside the scope of the NPRM. I suggest making this responsibility fall to the Director of Operations, his/her designee, or another agent for service.

The NPRM in 121.401, and 135.323 requires training of Dispatchers. I believe the phrase should reference "dispatchers, flight followers and flight locators". While not every part 121 or 135 carrier utilizes Certificated Dispatchers exercising the authority of their certificates, people acting in a similar function; dispatchers, flight followers and flight locators should all have that training.

Part F. Part 121 Appendix N Hazmat Training Curriculum

I applaud the NPRM section that provides ample time to ensure that all areas were thoroughly covered.

I am concerned that no standard exists for the length of time necessary to conduct training.

RSPA (you) provide training conducted at the Transportation Safety Institute (TSI) and conduct a 3-day 'Air Transportation of Hazmat' class. Do you recommend a three-day (minimum) class to qualify a person to competently handle Haz-Mat? I receive literature from a number of sources offering DOT approved Haz-mat training. These programs vary from one to three days in length. If one day of instruction for a new employee is enough from a commercial vendor, why does RSPA find it necessary to offer a longer program? Does RSPA market to a less intelligent clientele? I would expect the opposite, but how much information can be conveyed in only one day?

The FAA publishes the 'FAA National Operations and Training Manual for the Acceptance and Transport of Dangerous Goods in Air Transportation.' In that document, FAA recommends an 8-hour initial training program and a 2-hour recurrent training program for operators that elect to carry Haz-Mat.

I am familiar with only one commercial class that imposes strict standards of competence to successfully complete the training program. Offered by my colleague, Russell Bowen, of the Bureau of Dangerous Goods, the curriculum requires the completion of assigned homework and provides a 'study table' outside class hours to provide support. All students have the opportunity to successfully complete the class, but not every participant does.

My colleague Jim Powell, of the Transportation Development Group, has published and spoken many times of the training time necessary to become

licensed to cut hair in the state of Oklahoma; 1500 hours, versus the training time necessary to learn to identify, classify, pack, mark, label, handle, document and respond to incidents, involving Hazardous Materials loaded beneath the feet of unsuspecting airline passengers.

I appreciate the requirement for an “interactive session with an instructor who could address any questions or problem areas. Will air carriers currently using approved self-study programs to qualify employees and contractors under both Initial and Recurrent training programs be required to abandon this type of training in favor of the classroom?

Table 1 of Appendix N is incomplete.

Module 10 ‘Notice to Pilot-In-Command’ training is not required of Category 3 workers; “persons who handle, store, and load or unload packages, passenger baggage or cargo” on the aircraft.

If the person loading the cargo isn’t trained to notify the Pilot-In-Command, I must confess confusion as to who (within the operators organization) the responsibility should fall to provide the Pilot-In-Command with the information required under 49CFR part 175.33. Particularly to whom the responsibility falls to advise the PIC under 49CFR 175.33 (a)(4) and (5); the location of the Haz-Mat on the aircraft and confirmation that no damaged or leaking packages have been loaded on the aircraft.

Respectfully submitted,

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